

CHAPTER 2

INCIDENCE OF TAX

1. ICAI STUDY MATERIAL QUESTIONS

Concept Problem 1

From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.3.2022, compute the total income for the assessment year 2022-23, if he is:

- i) Resident and ordinarily resident;
- ii) Resident but not ordinarily resident;
- iii) Non-resident

S. No.	Particulars	Amount
(a)	Short term capital gain on sale of shares in Indian Company received in Germany	15,000
(b)	Dividend from a Japanese Company received in Japan	10,000
(c)	Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels	75,000
(d)	Dividend from RP Ltd., an Indian Company	6,000
(e)	Agricultural income from lands in Gujarat	25,000

Solution

Computation of total income of Mr. Anirudh for the A.Y. 2022-23

Particulars	Resident & ordinarily resident	Resident but not ordinarily resident	Non-Resident
Short term capital gain on sale of shares of an Indian company, received in Germany	15,000	15,000	15,000
Dividend from a Japanese company, received in Japan	10,000	-	-
Rent from property in London deposited in a bank in London [See Note (i)]	52,500	-	-
Dividend from RP Ltd., an Indian Company [See Note (ii)]	6,000	6,000	6,000
Agricultural income from land in Gujarat [See Note (iii)]	-	-	-
Total Income	83,500	21,000	21,000

Notes:

- i) It has been assumed that the rental income is the gross annual value of the property. Therefore, deduction @ 30% under section 24, has been provided and the net income so computed is taken into account for determining the total income of a resident and ordinarily resident.

Particulars	Amount
Rent received (assumed as gross annual value)	75,000
Less: Deduction under section 24 (30% of INR 75,000)	22,500

Particulars	Amount
Income from house property	52,500

- ii) Dividend from Indian company or foreign company is now taxable in hands of shareholder.
 iii) Agricultural income is exempt under section 10(1).

Concept Problem 2

Mr. David, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2021 due to his transfer to High Commission of Canada. He did not visit India any time during the previous year 2021-22. He has received the following income for the Financial Year 2021-22:

S.No.	Particulars	Amount
(i)	Salary (computed)	5,00,000
(ii)	Foreign Allowance [not included in (i) above]	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Pakistan	2,00,000
(v)	Income from house property in Pakistan	2,50,000

Compute his gross total income for Assessment Year 2022-23.

Solution

As per section 6(1), Mr. David is a non-resident for the A.Y. 2022-23, since he was not present in India at any time during the previous year 2021-22.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

- i) Income received or deemed to be received in India; and
 ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Pakistan and income from house property in Pakistan would not be chargeable to tax in the hands of David, assuming that the same were received in Pakistan.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. It has been assumed that Mr. David is a citizen of India.

However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of INR 4,00,000 is exempt under section 10(7).

Gross Total Income of Mr. David for A.Y. 2022-23

Particulars	Amount
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	6,00,000

Concept Problem 3

Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practicing in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India?

Solution

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

Fee for technical services income of a Non-Resident shall be deemed to accrue/arise in India, if it is received from:

- a) A Resident Person provided the services are used for the purpose of business or profession carried out in India, or for earning any income from any source in India, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

Concept Problem 4

Compute the total income in the hands of an individual aged 35 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2022-23.

Particulars	Amount
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Profits on sale of shares of an Indian company received in London	20,000
Dividend from British Company received in London	5,000
Profits on sale of plant at Germany 50% of profits are received in India	40,000
Income earned from Business in Germany which is controlled from Delhi (INR 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from House Property in London deposited in an Indian Bank at London, brought to India (computed)	50,000
Interest on debentures in an Indian company received in London.	12,000
Fees for technical services rendered in India but received in London	8,000
Profits from a business in Bombay managed from London	26,000
Income from property situated in Pakistan received there	16,000
Past foreign untaxed Income brought to India during the previous year	5,000
Income from agricultural land in Nepal received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on Savings Bank Deposit in State Bank of India	12,000
Income from a business in Russia, controlled from Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian company	5,000
Agricultural income from a land in Rajasthan	15,000

Solution

Computation of total income for the A.Y. 2022-2

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non-resident
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non-resident
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Profits on sale of shares of an Indian company received in London (assuming that they are in the nature of short-term capital gains)	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Profits on sale of plant at Germany, 50% of profits are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled from Delhi, out of which INR 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from property in London deposited in a Bank at London, later on remitted to India	50,000	-	-
Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Bombay managed from London	26,000	26,000	26,000
Income from property situated in Pakistan received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding [not taxable]	-	-	-
Interest on savings bank deposit in State Bank of India	12,000	12,000	12,000
Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan [Exempt under section 10(1)]	-	-	-
Gross Total Income	3,52,000	2,18,000	1,83,000
Less: Deduction under section 80TTA [Interest on savings bank account subject to a maximum of INR 10,000]	10,000	10,000	10,000

Particulars	Resident and ordinarily resident	Resident but not ordinarily resident	Non-resident
Total Income	3,42,000	2,08,000	1,73,000

Concept Problem 5

Mr. Ramesh & Mr. Suresh are brothers and they earned the following incomes during the FY 2021-22. Mr. Ramesh settled in Canada in the year 1996 and Mr. Suresh is settled in Delhi. Compute the total income for the AY 2022-23.

S No.	Particulars	Ramesh	Suresh
1	Interest on Canada Development Bonds (only 50% of interest received in India)	35,000	40,000
2	Dividend from British company received in London	28,000	20,000
3	Profit from a business in Nagpur, but managed directly from London	1,00,000	1,40,000
4	Short term capital gain on sale of shares of an Indian company received in India	60,000	90,000
5	Income from a business in Chennai	80,000	70,000
6	Fees for technical services rendered in India, but received in Canada	100,000	
7	Interest on savings bank deposit in UCO Bank, Delhi	7,000	12,000
8	Agricultural income from a land situated in Andhra Pradesh	55,000	45,000
9	Rent received in respect of house property at Bhopal	1,00,000	60,000
10	Life insurance premium paid	—	30,000

Solution**Computation of total income of Mr. Ramesh & Mr. Suresh for the A.Y. 2022-23**

S. No.	Particulars	Ram	Shyam
1.	Interest on Canada Development Bond (See Note 2)	17,500	40,000
2	Dividend from British Company received in London (See Note 3)	-	20,000
3	Profit from a business in Nagpur but managed directly from London (See Note 2)	1,00,000	1,40,000
4	Short term capital gain on sale of shares of an Indian company received in India (See Note 2)	60,000	90,000
5	Income from a business in Chennai (See Note 2)	80,000	70,000
6	Fees for technical services rendered in India, but received in Canada (See Note 2)	1,00,000	-
7	Interest on savings bank deposit in UCO Bank, Delhi (See Note 2)	7000	12,000
8	Agricultural income from a land in Andhra Pradesh (See Note 4)		-
9	Income from house property at Bhopal	70,000	42,000
	Gross Total income	4,34,500	4,14,000
	Less: Deduction under chapter VI-A 80C-Life insurance premium		30,000
	Section 80TTA (See Note 5)	7,000	10,000
	Total Income	4,27,500	3,74,000

Notes:

- 1) Ramesh is a non-resident since he has been living in Canada since 1996. Suresh, who is settled in Delhi, is a resident.
- 2) In case of a resident, his global income is taxable as per section 5(1). However, in case of a non-resident, only the following incomes are chargeable to tax:
 - i) Income received or deemed to be received in India; and
 - ii) Income accruing or arising or deemed to accrue or arise in India.

Therefore, fees for technical services rendered in India would be taxable in the hands of Ramesh, even though he is a non-resident. The income referred to in SI. No. 3, 4, 5, 7 and are taxable in the hands of both Ramesh and Suresh since they accrue or arise in India.

Interest on Canada Development Bond would be fully taxable in the hands of Suresh, whereas only 50% which is received in India is taxable in the hands of Mr. Ramesh.

- 3) Dividend received from British company in London by Ramesh is not taxable since it accrues and is received outside India. However, dividend received by Suresh is taxable, since he is a resident.
- 4) Agricultural income from a land situated in India is exempt under section 10(1) in the case of both non-residents and residents.
- 5) In case of an individual, interest up to 10,000 from savings account with, inter alia, bank is allowable as deduction under section 80TTA.

Concept Problem 6

Discuss the correctness or otherwise of the statement – “Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus”.

Solution

This statement is correct.

As per Explanation to section 9, income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not -

- (i) non-resident has a residence or place of business or business connection in India; or
- (ii) the non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty from services utilised in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India and irrespective of whether the non-resident has a residence or place of business or business connection in India

Concept Problem 7

Examine with reasons whether the following transactions attract income-tax in India in the hands of recipients:

- i) Salary paid by Central Government to Mr. John, a citizen of India INR 7,00,000 for the services rendered outside India.
- ii) Interest on moneys borrowed from outside India INR 5,00,000 by a non-resident for the purpose of business within India say, at Mumbai.
- iii) Post office savings bank interest of INR 19,000 received by a resident Assessee, Mr. Ram.
- iv) Royalty paid by a resident to a non-resident in respect of a business carried on outside India
- v) Legal fee of INR 5,00,000 paid to a lawyer of UK who visited India to represent a case at Delhi High Court.

Solution

S. No	Taxable / Not Taxable	Amount liable to tax	Reason
(i)	Taxable	6,50,000	As per section 9(1)(iii), salaries payable by the Government to a citizen of India for service rendered outside India shall be deemed to accrue or arise in India. Therefore, salary paid by Central Government to Mr. John for services rendered outside India would be deemed to accrue or arise in India since he is a citizen of India. He would be entitled to standard deduction of ₹50,000 u/s 16(ia).
(ii)	Taxable	5,00,000	As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.
(iii)	Partly Taxable	5,500	The interest on Post Office Savings Bank Account, would be exempt under section 10(15)(i), only to the extent of INR 3,500 in case of an individual account. Further, interest upto INR 10,000, would be allowed as deduction u/s 80TTA from Gross Total Income. Balance INR 5,500 i.e., INR 19,000 - 3,500 - 10,000 would be taxable in the hands of Mr. Ram, a resident.
(iv)	Not Taxable	-	Royalty paid by a resident to a non-resident in respect of a business carried outside India would not be taxable in the hands of the non-resident provided the same is not received in India. This has been provided as an exception to deemed accrual mentioned in section 9(1) (vi)(b).
(v)	Taxable	5,00,000	In case of a non-resident, any income which accrues or arises in India or which is deemed to accrue or arise in India or which is received in India or is deemed to be received in India is taxable in India. Therefore, legal charges paid in India to a non-resident lawyer of UK, who visited India to represent a case at the Delhi High Court would be taxable in India.

2. ICAI RTPs, MTPs AND PAST YEAR QUESTIONS**Concept Problem 8**

Mr. Rajesh Sharma (aged 62 years), an Indian citizen, travelled frequently out of India for his business trip as well as for his outings. He left India from Delhi airport on 29th May 2021 as stamped in the passport and returned on 27th April 2022. He has been in India for less than 365 days during the 4 years immediately preceding the previous year. Determine his residential status and his total income for the AY 2022-23 from the following information:

- Short term capital gain on the sale of shares of Tilt India Ltd., a listed Indian company, amounting to INR 58,000. The sale proceeds were credited to his bank account in Singapore.
- Dividend amounting to INR 48,000 received from Treat Ltd., a Singapore based company, which was transferred to his bank account in Singapore. He had borrowed money from Mr. Abhay, a non-resident Indian, for the above-mentioned investment on 2nd April, 2021. Interest on the borrowed money for the previous year 2021-22 amounted to INR 5,800.
- Interest on fixed deposit with Punjab National Bank, Delhi amounting to INR 9,500 was credited to his saving bank account.

Solution**Determination of residential status**

An individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:

- i) He has been in India during the previous year for a total period of 182 days or more, or
- ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

Mr. Rajesh Sharma, an Indian citizen, has not satisfied either of the basic conditions for being a resident, since he was in India for only 59 days during the PY 2021-22. Hence, he is non-resident in India for A.Y.2022-23.

Computation of total income of Mr. Rajesh Sharma for A.Y.2022-23

Particulars		Amount
(1)	Short-term capital gain on sale of shares of an Indian listed company is chargeable to tax in the hands of Mr. Rajesh Sharma, since it has accrued and arisen in India even though the sale proceeds were credited to bank account in Singapore.	58,000
(2)	Dividend of INR 48,000 received from Singapore based company transferred to his bank account in Singapore is not taxable in the hands of the non-resident since the income has neither accrued or arisen in India nor has it been received in India. Since dividend is not taxable in India, interest paid for investment is not allowable as deduction.	Nil
(3)	Interest on fixed deposit with Punjab National Bank, Delhi credited to his savings bank account is taxable in the hands of Mr. Rajesh Sharma as Income from other sources, since it has accrued and arisen in India and is also received in India. He would not be eligible for deduction under section 80TTB, since he is a non-resident.	9,500
Total Income		67,500

Concept Problem 9

From the following particulars of income earned by Miss Neha during the PY 2021-22, determine her taxable income assuming she is ROR, RNOR, NR.

S No	Particulars	Amount (INR)
1	Profit from a business in Mumbai managed from London.	3,00,000
2	Pension for services rendered in India, but received in Burma.	65,000
3	Interest on US Government bonds half of which is received in India.	4,000
4	Income from property situated in Pakistan received there.	20,000
5	Income from agricultural land in Bhutan.	30,000
6	Income from profession in Kenya which was set up from India.	12,000

Solution

S No	Particulars	RoR	NoR	NR
1	Profit from a business in Mumbai managed from London.	3,00,000	3,00,000	3,00,000
2	Pension for services rendered in India but received in Burma.	15,000	15,000	15,000

3	Interest on US Govt. bonds half of which is received in India.	4,000	2,000	2,000
4	Income from property situated in Pakistan received there	20,000	-	-
5	Income from agricultural land in Bhutan.	30,000	-	-
6	Income from profession in Kenya which was set up from India	12,000	12,000	-

Concept Problem 10

Determine the taxability of income of US based company ABC Inc., in India on entering following transactions during the financial year 2021-22:

- i) INR 5 lakhs received from an Indian domestic company for providing technical know-how in India.
- ii) INR 6 lakhs from an Indian firm for conducting the feasibility study for the new project in Finland.
- iii) INR 4 lakhs from a non-resident for use of patent for a business in India.
- iv) INR 8 lakhs from a non-resident Indian for use of know-how for a business in Singapore.

Explain the rate of tax applicable on taxable income for US based company ABC Inc., in India

Solution

Interest/Royalty/ Fee for technical services income of a Non- Resident shall be deemed to accrue/arise in India, if it is received from:

- a) Government (State or Central); or
- b) A Resident Person except where the money borrowed or technical service or patent is used for the purpose of business or profession carried out outside India, or for earning any income from any source outside India
- c) A Non-Resident person provided the money borrowed or technical service or patent is used for the purpose of business or profession carried out in India.
 - i) This income shall be taxable in the hands of ABC Limited since technical services are being used in India.
 - ii) This income shall not be taxable in the hands of ABC Limited since technical services are not being used in India.
 - iii) This income shall be taxable in the hands of ABC Limited since patent is being used in India for the purpose of business/profession in India.
 - iv) This income shall not be taxable in the hands of ABC Limited since know how is being used outside India.

Hence, total income of ABC Ltd. taxable in India is INR 9 Lakhs. Applicable rate of tax in case of foreign company is 40%. Hence, tax liability of ABC Ltd. shall be $[(9,00,000 \times 40\%) \times 1.04] = 3,74,400$.

Concept Problem 11

Ram has the following income during the PY 2021-22. Compute his taxable income if he is a) ROR b) RNOR c) NR

S No.	Particulars	Amount	R-OR	R-NOR	NR
1	Lottery won in China (20% amount received in India)	4,00,000			
2	Income from modeling profession <ol style="list-style-type: none"> 1. Modeling in India. 2. Modeling Outside India. 	3,00,000 6,00,000			
3	Salary (3 months service rendered in India and 9 months service in Japan)	20,000 pm			

S No.	Particulars	Amount	R-OR	R-NOR	NR
4	Income from letting out of urban land situated in Goa (let out to a Non-resident in Japan & rent received in Japan)	5,00,000			
5	Income from business carried out in Singapore (30% is attributable to activities performed in India)	10,00,000			
6	Interest on foreign currency bonds issued by an Indian Company in Japan.	3,50,000			
7	Interest received in Japan on money lent to Mr. Nagasaki for carrying on business in Mumbai.	2,00,000			
8	Royalty received in US from a publisher for a publication and sale of her novel in India.	8,00,000			
9	Income earned from business in Germany which is controlled from Delhi, INR 40,000 received in India	70,000			
10	Income earned from Profession in USA which is set up in India, INR 50,000 received in India	1,00,000			
11	Rent from property in London deposited in an Indian Bank at London, brought to India	50,000			
12	Past untaxed profit brought in India from Germany	10,000			
13	Gift received on the occasion of wedding	20,000			
14	Post office savings bank interest of INR 12,000 received by a resident Assessee, Mr. Ram.	12,000			

Solution

S No.	Particular	R-OR	R-NOR	NR
1	Lottery won in China (20% amount received in India)	4,00,000	80,000	80,000
2	Income from modeling profession 1. Modeling in India. 2. Modeling Outside India.	3,00,000 6,00,000	3,00,000 -	3,00,000 -
3	Salary (3 months service rendered in India and 9 months service in Japan)	240,000	60,000	60,000
4	Income from letting out of land (Non- Agricultural) situated in Bhagalpur (let out to a Non-resident in Japan & rent received in Japan)	5,00,000	5,00,000	5,00,000
5	Income from business carried out in Singapore (30% is attributable to activities performed in India)	10,00,000	3,00,000	3,00,000
6	Interest on foreign currency bonds issued by an Indian Company in Japan.	3,50,000	3,50,000	3,50,000
7	Interest received in Japan on money lent to Mr. Nagasaki for carrying on business in Mumbai.	2,00,000	2,00,000	2,00,000
8	Royalty received in US from a publisher for a publication and sale of her novel in India.	8,00,000	8,00,000	8,00,000
9	Income earned from business in Germany which is controlled from Delhi, INR 40,000 received in India	70,000	70,000	40,000
10	Income earned from Profession in USA which is set up in India, INR 50,000 received in India	1,00,000	1,00,000	50,000

S No.	Particular	R-OR	R-NOR	NR
11	Rent from property in London deposited in an Indian Bank at London, brought to India	50,000	-	-
12	Past untaxed profit brought in India from Germany	-	-	-
13	Gift received on the occasion of wedding	-	-	-
14	Post office savings bank interest of INR 12,000 received by Mr. Ram. (Note 1)	8,500	8,500	8,500

Note: Interest income from a post office saving account is exempt upto INR 3,500 u/s 10(15).

Note: Past foreign untaxed profit brought in India does not represent income of PY 2021-22.

Concept Problem 12

A firm of solicitors in Delhi engaged a barrister of London for arguing a case before Supreme Court in India. A payment of \$50,000 was made to him in London, according to the terms of the professional engagement. It is claimed that since the payment is made outside India, no tax is payable on the fees paid.

How should the Assessing Officer proceed in this case?

Solution

Income from business connection in India shall be deemed to accrue or arise in India & chargeable to tax [sec 9(1)(i)]. Business connection also includes professional connection.

In the given case, the London barrister has earned through firm of solicitors based in Delhi & income has been earned only through professional connection in India & the same is deemed to accrue or arise in India & chargeable to tax in India. Hence, the AO shall charge the same to tax in the hands of London Barrister.

Concept Problem 13

Tax Limited, a company incorporated in USA has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Delhi. As per the agreement, Tax Limited rendered both off-shore services and on-shore services to KK Limited at fee of INR 1 crore and 1.5 crore, respectively. Tax Limited is of the view that it is not liable to tax in India in respect of fee of 1 crore as it is for rendering services outside India.

Discuss the correctness of the view of Tax Limited.

Solution

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

Fee for technical services income of a Non-Resident shall be deemed to accrue/arise in India, if it is received from:

- A Resident Person in all cases except where the services are used for the purpose of business or profession carried out outside India, or for earning any income from any source outside India

Place of rendering of services is not important; rather place of utilization of services is important. In this case, both onshore and offshore services provided by Tax Limited are being used in India for the purpose of earning income in India. Hence, entire 2.5 crores shall be treated as income in the hands of Tax Ltd.

Concept Problem 14

Tax Pvt. Ltd, a company having registered head office in Singapore, for the first time had carried out operations during FY 2021-22 of purchase of goods in India on four occasions. Immediately after the purchase, the company exported the same to China. The total value of such exports was INR 100 Lakhs on which it earned a profit of INR 20 Lakhs before the expenses of INR 12 Lakhs, which were directly paid by Head Office.

Company seeks your advice in relation to its tax liability in India. How much income for AY 2022-23 shall be subject to tax?

Solution

Income from business connection in India shall be deemed to accrue or arise in India & chargeable to tax (sec 9).

However, if a non-resident purchases goods in India for the purpose of export outside India, then there is no business connection and no income shall be deemed to accrue or arise in India in the hands of such non-resident.

Hence, Assessee is a non-resident procuring goods in India for purpose of exports and no portion of the income is deemed to accrue or arise in India & is not taxable in India.

Concept Problem 15

Mr. Soham, an Indian Citizen, left India on 20-04-2019 the first time to setup a software firm in Singapore. On 10-04-2021, he entered into an agreement with LK Limited, an Indian Company, for the transfer of technical documents and designs to setup an automobile factory in Faridabad. He reached India along with his team to render the requisite services on 15-05-2021 and was able to complete his assignment on 20-08-2021. He left for Singapore on 21-08-2021. He charged INR 50 lakhs for his services from LK Limited.

Determine the residential status of Mr. Soham for the Assessment Year 2022-23 and examine whether the fees charged from LK Limited would be chargeable to tax as per the Income-tax Act, 1961.

Solution

Determination of residential status of Mr. Soham

As per section 6(1), an individual is said to be resident in India in any previous year if he satisfies the conditions:

- i) He has been in India during the previous year for a total period of 182 days or more, or
- ii) He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year or an Indian citizen, who being outside India, comes on a visit to India in any previous year, second basic condition is not applicable. Rather he is considered as Resident only if he satisfies the first basic condition of stay of at least 182 days in the relevant previous year.

In this case, Mr. Soham is an Indian citizen who left India to set up a software firm in Singapore on 20.04.2019 and who comes on a visit to India during the P.Y. 2021-22. Accordingly, second basic condition is not applicable in such case.

Further, if his total income excluding foreign income exceeds 15 lakhs, he shall be considered as Resident if his stay during relevant PY is 120 days or more and his stay in four years preceding the relevant PY is 365 days or more.

His stay in India during the period of his visit is only 99 days (i.e., 17+30+31+21 days). Since his stay in India during the previous year 2021-22 is only 99 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for A.Y. 2022-23 is Non-Resident.

Taxability of income

As per section 5(2), in case of a non-resident, only income which accrues or arises or which is deemed to accrue or arise to him in India or which is received or deemed to be received in India in the relevant previous year is taxable in India.

Royalty income of a Non-Resident shall be deemed to accrue/arise in India, if it is received from:

- a) A Resident Person provided the services are used for the purpose of business or profession carried out in India, or for earning any income from any source in India.

In this case, Mr. Soham, a non-resident, charges fees from LK Ltd., an Indian company, for transfer of technical documents and designs to set up an automobile factory in Faridabad.

The fees received by Mr. Soham for transfer of technical documents and designs and rendering of requisite services in relation thereto would fall within the meaning of “royalty”.

In this case, since the royalty is payable by an Indian company to Mr. Soham, a non-resident, in respect of services utilized for a business in India (namely, for setting up an automobile factory in Faridabad), the same is deemed to accrue or arise in India and is hence, taxable in India in the hands of Mr. Soham, a non-resident for the AY 2022-23.

Concept Problem 16

Mr. Dhruv, a person of Indian origin and citizen of Country X, got married to Ms. Deepa, an Indian citizen residing in Country X, on 4th February, 2021 and came to India for the first time on 20-02-2021. He left for Country X on 12th August, 2021. He returned to India again on 20-01-2022 with his wife to spend some time with his parents-in law for 30 days and thereafter returned to Country X on 18.02.2022.

He received the following gifts from his relatives and friends of her wife during 01-04-2021 to 31-03-2022 in India:

Particulars	Amount
From parents to wife	1,01,000
From married sister of wife	11,000
From very close friends of his wife	2,82,000

- Determine his residential status and compute the total income chargeable to tax along with the amount of tax payable on such income for the Assessment Year 2022-23.
- Will your answer change if he has received 16,00,000 instead of 2,82,000 from very close friends of his wife during the previous year 2021-22 and he stayed in India for 400 days during the 4 years preceding the previous year 2021-22?

Solution

Determination of residential status and computation of total income and tax payable of Mr. Dhruv

Under Section 6(1), an individual, being person of Indian origin and who comes on a visit of India during the previous year and his total income other than the income from foreign source exceeds 15,00,000, is said to be a resident in India, if he stayed in India for a total period of 120 days or more during that previous year and for 365 days or more during the 4 years immediately preceding the relevant previous year.

However, in case, the total income other than the income from foreign source does not exceed 15,00,000, the said individual is said to be resident in India, only if he stayed in India for a total period of 182 days or more during that previous year.

Since in the present case, total income other than from foreign sources, of Mr. Dhruv, a person of Indian origin does not exceed 15,00,000, he would be said to be resident in India, only if he stayed in India for 182 days or more during the previous year 2021-22 relevant to A.Y. 2022-23.

His stay in India during the previous year 2021-22 is as under:

Particulars	Amount
01.04.2021 to 12.08.2021	134 days
20.01.2022 to 18.02.2022	30 days
Total	164 days

Since Mr. Dhruv has stayed in India during the previous year for less than 182 days, he is said to be non-resident. Accordingly, his total income and tax payable would be computed in the following manner.

Computation of total income and tax payable of Mr. Dhruv for the A.Y. 2022-23.

Particulars	Amount
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Particulars	Amount
Income from other Sources	
Cash gifts received from non-relatives is chargeable to tax as per section 56(2)(x) if the aggregate value of such gifts exceed 50,000	
- 1,01,000 received from parents of wife would be exempt, since parents of wife fall within the definition of “relatives” and gifts from a relative are not chargeable to tax.	Nil
- 11,000 received from married sister-in law is exempt, since sister of wife falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil
- Gift received from close friends of his wife 2,82,000 is taxable under section 52(2)(x) since the said sum exceeds 50,000.	2,82,000
Total Income	2,82,000
Tax on total income of 2,82,000 [5% of 32,000 in excess of 2,50,000 , being the basic exemption limit]	1,600
Add: Health and Education cess @ 4%	64
Total tax payable	1664
Total tax payable (rounded off)	1660

Part B**Determination of residential status and computation of total income and tax payable of Mr. Dhruv (if he has received cash gifts from non-relative for 16,00,000):**

Where an individual, being a person of Indian origin comes on visit to India and he is having total income other than income from foreign sources exceeding 15 lakhs during the previous year, such individual is said to be resident in India, if he stays in India during the previous year for 120 days or more and for 365 days or more during the 4 years immediately preceding the relevant previous year.

As per section 6(6), such individual whose stay in India is for 120 days or more but less than 182 days in the P.Y. 2021-22 would be resident but not ordinarily resident irrespective of his residential status or no. of days of stay in India in the immediately preceding PYs.

Mr. Dhruv, is a person of India origin who has come on a visit to India during the previous year. Since his total income other than income from foreign sources exceeds 15,00,000; and his stay in India is for 164 days during the P.Y. 2021-22 and for 400 days during the 4 years immediately preceding the P.Y. 2021-22, he is resident but not ordinarily resident in India for the P.Y. 2021-22.

In such case, his total income and tax payable would be computed in the following manner:

Computation of total income and tax payable of Mr. Dhruv for the A.Y. 2022-23

Particulars	Amount
Income from other Sources	
Cash gifts received from non – relatives is chargeable to tax as per section 56(2)(x) if the aggregate value of such gifts exceeds 50,000.	
- 1,01,000 received from parents of wife would be exempt, since parents of wife fall within the definition of “relatives & gifts from a relative are not chargeable to tax.	Nil
- 11,000 received from married sister-in law is exempt, since sister of wife falls within the definition of relative and gifts from a relative are not chargeable to tax.	Nil
- Gift received from close friends of his wife 16,00,000 is taxable under section 56(2)(x) since the amount of cash gifts exceeds 50,000	16,00,000
Total Income	16,00,000

Particulars	Amount
Tax on total income of 16,00,000	2,17,500
Upto 2,50,000 Nil	
2,50,001 – 5,00,000 [2,50,000 @5%] 12,500	
5,00,001 – 7,50,000 [2,50,000 @10%] 25,000	
7,50,001 – 10,00,000 [2,50,000@15%] 37,500	
10,00,001 – 12,50,000 [2,50,000@20%] 50,000	
12,50,001 – 15,00,000 [2,50,000@25%] 62,500	
15,00,001 – 16,00,000 [1,00,000@30%] 30,000	
Add: Health and Education cess @4%	8,700
Total tax payable	2,26,200

Note – Since his tax payable as per normal provisions is 3,04,200 [2,92,500 (1,12,500 plus 30% on 6,00,000 income exceeding 10,00,000) plus 11,700, being health and education cess @4%], which is higher than the tax payable computed as per concessional tax rates available under section 115BAC, it is beneficial for him to opt for section 115BAC.

Concept Problem 17

Mr. Thomas, a non-resident and citizen of Japan entered into following transactions during the previous year ended 31.03.2022. Examine the tax implications in the hands of Mr. Thomas for the Assessment Year 2022-23 as per Income-tax Act, 1961. (Give brief reasoning)

- Interest received from Mr. Marshal, a non-resident outside India (The borrowed fund is used by Mr. Marshal for investing in Indian company's debt fund for earning interest).
- Received 10 lakhs in Japan from a business enterprise in India for granting license for computer software (not hardware specific).
- He is also engaged in the business of running news agency and earned income of 10 lakhs from collection of news and views in India for transmission outside India.
- He entered into an agreement with SKK & Co., a partnership firm for transfer of technical documents and design and for providing services relating thereto, to set up a Denim Jeans manufacturing plant, in Surat (India). He charged 10 lakhs for these services from SKK & Co.

Solution –

- Not taxable, since interest payable by a non-resident to another non-resident would be deemed to accrue or arise in India only if the borrowed fund is used for the purposes of business or profession carried on by him in India. In this case, it is used for investing in Indian company's debt fund for earning interest and not for the purposes of business or profession. Hence, it is **not taxable** in India.
- Royalty includes, inter alia, consideration for grant of license for computer software. Hence, the amount of 10 lakhs payable by a resident (business enterprise in India) for grant of license for computer software would be royalty which is deemed to accrue or arise in India in the hands of Mr. Thomas, a non-resident, since it is for the purpose of business in India. Hence, the royalty **is taxable** in India.
- No income shall be deemed to accrue or arise to Mr. Thomas through or from activities which are confined to the collection of news and views in India for transmission outside India. Hence, 10 lakhs is **not taxable** in India in the hands of Mr. Thomas.
- 10 lakhs is deemed to accrue or arise in India to Mr. Thomas, a non-resident, since it represents royalty/fees for technical services paid for services utilized in India, in this case, for setting up a Denim Jeans manufacturing plant in Surat. Hence, the same would be **taxable** in India in the hands of Mr. Thomas.